

DR. ADRIANO B. VELASQUEZ, COMPLAINANT, VS. ATTY. APOLONIO BARRERA, RESPONDENT.*Adm. Case No. 415. August 29, 1969*

Ponente: DIZON, J.

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In a verified complaint filed with this Court on January 14, 1960, Dr. Adriano B. Velasquez sought the disbarment of Apolonio Barrera for alleged acts committed in violation of his oath of office. In due time, the respondent Barrera filed his answer denying the charges. The proceedings had thereafter are detailed in the report submitted by the Office of the Solicitor General, as follows:

"In its resolution dated February 12, 1960, this Honorable Court referred this case to this Office for investigation, report and recommendation. Most of the parties being residents of Baguio, this Office indorsed the case to the city fiscal of Baguio. In his report dated May 16, 1961, he recommended that the case be dismissed for lack of interest because the complainant failed to appear at the hearing. In view of this report the Office of the Solicitor General addressed a letter to the complainant informing him of the report of the fiscal of Baguio and inquired from him as to whether or not he was no longer interested in the case. In a letter dated July 31, 1961, however, the complainant Adriano B. Velasquez, wrote the Office of the Solicitor General inquiring as to the status of the case. He also vehemently denied the report of the City Attorney of Baguio that he failed to appear for hearing of the administrative case. According to the complainant, he was never notified or summoned to appear for hearing. As a matter of fact, he had been attending trials of his criminal case in Baguio City yet he was never informed of the alleged hearing of the administrative case. In view of this circumstance, the complainant requested that the hearing be conducted by the Solicitor General. Forthwith, this Office set the administrative case for hearing at 9:00 a.m. on August 21, 1961. Only the complainant and his witnesses appeared. At about 10:30 a.m., the undersigned investigator received a long distance telephone call from the respondent at Baguio requesting for a postponement on the ground that he was ill with fever. The hearing was transferred to September 7, 1961 at 9:00 o'clock a.m. On September 2, 1961, the respondent filed a manifestation waiving his right to appear at the hearing set on September 7, 1961 on the ground that he was still ill. He further stated that he was submitting his defense contained in his answer.

"In a manifestation made by the complainant himself, he stated that he went to the Office of the respondent in Baguio City and actually saw him well and strong attending to his clients and typing. He therefore requested that the administrative case be set for hearing. The hearing was, nevertheless, postponed to October 26, 1961. The respondent failed to appear and reiterated his manifestation in writing that he was waiving his right to appear and to submit his defense contained in his answer. Notwithstanding this manifestation, the hearing was set on December 14, 1961. In spite of due notice to him, the respondent failed to appear. The case was again set for hearing on February 20, 1962 at 2:30 p.m. The hearing was again postponed to April 25, 1962 and again on May 9, 1962. The respondent was duly notified of all of these hearings. In a motion, the complainant requested for the postponement of the hearing set on May 9, 1962 to another date after the criminal case involving the subject matter of this administrative case is terminated.

"The hearing was held in abeyance until January 16, 1963. Upon motion of the respondent that he had

scheduled cases to attend to, the investigator set the hearing on February 25, 1963. Respondent again requested for a postponement of the hearing on the ground that he had other cases to attend to on said date. In view of the many requests for postponements by the respondent, and considering that he had waived his right to appear in his defense, and that the complainant objected to further postponements, the investigator allowed said complainant to introduce his evidence. To give an opportunity to respondent to cross examine the complainant and his witness to make his defense, the case was postponed to March 12, 1963 at 9:30 A.M. In view of the failure of the respondent to appear, the undersigned investigator cross-examined the complainant and thereafter re-requested him to submit his memorandum furnishing a copy thereof to the respondent and giving the latter a period of ten (10) days from receipt thereof to file his reply if he so desires. According to the evidence of the complainant, the respondent received his memorandum on March 27, 1963. Up to this date, respondent has not filed any memorandum, hence, he is deemed to have submitted this case for report and recommendation.

"In his urgent petition dated March 10, 1963, received by this office after the hearing on March 12, 1963, the respondent requested the postponement of the hearing set on March 12, 1963 on the ground that he had a full calendar of cases to attend to in March, April, and May. He requested that the case be set any day in June, 1963. Respondent has not indicated what cases and in what courts he was attending throughout the months of March, April and May. In spite of this long period of postponement, the investigator, in order to accommodate the respondent, set the case for hearing on June 27 and 28, 1963 at 2:30 p.m. On June 27 and 28, 1963, neither the respondent nor his witnesses appeared."

Complainant's specific charges against the respondent, as summarized by the Office of the Solicitor General, are the following:

"1. After receiving from the complainant attorney's fees in the amount of P120.00 and the sum of P100.00 for payment of appeal bond and for other expenses for instituting the appeal of a civil case from the municipal court of the City of Baguio to the Court of First Instance, wherein complainant's brother was involved, the respondent attorney failed to file the appeal bond (p. 1, rec.) and the necessary pleading thus losing the case by default.

"2. Respondent attorney, through insidious machinations induced the complainant to sign an alleged chattel mortgage over his personal properties in favor of Alberto Ymson and Nicolas Ymson to prevent their confiscation by the Sheriff should the case be decided against complainant's brother; that said respondent represented to the complainant that the chattel mortgage would not be registered. It turned out later that said respondent not only did sue the complainant for estafa on said chattel mortgage which he himself prepared and induced the complainant to sign but also instituted foreclosure proceedings. Respondent also filed a fourth party complaint in his capacity as attorney of the mortgagees Nicolas Ymson and Alberto Ymson, thus betraying his confidence and trust imposed on him as his attorney;

"3. Respondent himself demanded and forced complainant and his brother to turn over to him the personal properties mortgaged in the chattel mortgage in question (pp. 3-4, rec.)."

Respondent's answer to the above charges have been similarly summarized by the Office of the Solicitor General, as follows:

"In his defense, respondent filed his answer alleging among other things that there never existed an attorney and client relationship between him and the complainant; that he was in fact the attorney of Pedro Velasquez and Jose P. Pañgan; that the complainant Adriano Velasquez came to the picture only when he defrayed the expenses in the appeal of the civil case of his brother Pedro Velasquez. He admitted that he sent a telegram to the complainant to ask money to defray the expenses of the civil suit of his brother (pp. 19-20, rec.).

"Respondent also admitted that it was he who prepared a chattel mortgage signed by the complainant but said chattel mortgage was valid and legal on its face; that upon failure of Pedro Velasquez to pay his obligations, he

de-manded from the complainant to make good his guarantee that he assumed in behalf of his brother (p. 23, rec.).

"Respondent denied having used force on Pedro Velasquez in taking possession of the mortgaged properties the truth being that be-cause Adriano Velasquez surreptitiously hid the mortgage properties, the sheriff of Baguio City could not execute the mortgage foreclosure, hence, he had to prosecute the complainant for violation of the Chattel Mortgage Law (p. 24, rec.).

"Respondent alleged that the civil case he handled for Pedro Velasquez was not declared in default, for he in fact filed an answer, Pedro Velasquez lost the case on appeal because he had no valid defense whatsoever and in fact he admitted that he failed to pay the rentals of the premises from July, 1958 to January, 1959 (p. 25, rec.).

"Respondent alleged that he prosecuted the complainant in behalf of his clients Alberto and Nicolas Ymson and that the complainant was never his client; that furthermore, it was his duty to implead complainant Adriano Velasquez who guaranteed the payment of whatever damages they may sustain as indemnitors (p. 25, rec.)."

On September 11, 1963, the Solicitor General filed with this Court his report and recommendation finding the respondent guilty of having violated his oath of office by committing the acts complained of, and recommending his reprimand. Its pertinent portions read as follows:

"Notwithstanding the denials of the respondent in his answer, this investigator finds that respondent has, one way or another, committed malpractice or misconduct by taking undue advantage of the complainant, and in fact abused his confidence in violation of his oath of office, as a lawyer.

"In the first place, respondent's general denial that complainant was never his client is not sufficient to exculpate him from responsibility of the charges of gross misconduct and abuse of confidence as established by the complainant. While it is true that the civil case for ejectment (Civil Case No. 2174, municipal court of Baguio City) was filed against Pedro Velasquez, who is complainant's brother, it was the complainant himself who hired the services of the respondent to institute the appeal to the Court of First Instance of Baguio City (Civil Case No. 837, CFI, Baguio) paying him P100.00 for his attorney's fees and P120.00 for appeal bond and other expenses. It cannot be denied on this point that the complainant himself was an interested party in the outcome of the case since he was a part owner of the personal properties to be confiscated by the sheriff. While the evidence does not clearly show that the civil case sought to be appealed to the Court of First Instance of Baguio City was dropped due to default for failure to file a timely answer, it appears that the respondent failed to pay the appeal bond out of the amount of P100.00 he received from the complainant (pp. 3-4, t.s.n., July 22, 1963, Exh. J).

"Furthermore, in order to stay the execution of the decision of the municipal court of Baguio, the complainant had to execute a chattel mortgage on his properties in favor of Alberto Ymson and Nicolas Ymson. The execution of the chattel mortgage was upon the advice of the respondent. In other words, there is no question here that the respondent was already giving legal advice not only to the parties to the civil case, namely, Pedro Velasquez and Jose Pañgan, but also the complainant himself, who was to be adversely affected in the outcome of the case.

"Instead of prosecuting the appeal for Pedro Velasquez, the brother of the complainant wherein it was the complainant who engaged his services, having paid him the amount of P120.00 as attorney's fees and P100.00 as expenses for the appeal bond, the said respondent neglected and failed to exert all his efforts to protect the interests of his client. Instead, he even induced the complainant to sign an alleged chattel mortgage and later turned against him representing this time Nicolas and Alberto Ymson as mortgagees. On top of this, he even instituted a criminal case of estafa against the complainant. In fact, he also represented the Ymson brothers in the third and fourth party complaints in Civil Case No. 837, Court of First Instance of Baguio City. These actuations of the respondent indeed as a member of the bar is not only highly improper but also violative of his

oath to conduct himself as a lawyer to act in good faith and fidelity. This practice of representing two adverse in-interests has been severely disapproved as strongly tending to deprive the relation of attorney and client of those special elements which make it one of trust and confidence and to change it into one which may be modified or dallied with at the expense of those special obligations under which an attorney lies to his client by reason of such relation. It is very difficult for an attorney to give disinterested advice where he represents both parties to a controversy; so difficult, in fact that it has become a fixed rule in all branches of the law that when one is representing another in a given matter, he cannot, at the same time, legally represent his principal's adversary (In re De la Rosa, 27 Phil. 258).

"Without impugning the lawyer's good faith, his taking up the cause of the adversary of the party who had sought and obtained legal advice from his firm cannot, nevertheless, be sanctioned; this, not necessarily to prevent any injustice to that party but to keep above reproach the honor and integrity of the courts and of the bar (Hilado v. Gutierrez David, et al., L-961, Sept. 21, 1949, 47 O.G. (3), 1135).

"Moreover, as admitted by the respondent himself in his answer, the civil case for ejectment against complainant's brother was a hopeless case since they admitted that they failed to pay the annual rentals. That being the case, respondent in the performance of his duty as attorney, should have advised complainant and his brother not to institute the appeal. Said advice if properly made, would have saved complainant and his brother from a hopeless appeal and filing of notice of appeal, payment of supersedeas bond, appeal bond and necessary docket fees, and attorney's fees (pp. 24-25, rec.). It is a settled rule in legal ethics that it is unwise if not improper for a lawyer to take a case unless he has a reasonable chance of success. He has no right to his retainer or to fees in such a case unless the client, understanding all the probabilities, voluntarily assumes the risk. Even then the lawyer owes a duty to his own reputation as an attorney not to take cases in which he must inevitably fail.

"This investigator has also observed that in spite of several notices of hearing, the respondent refused and did not take interest in appearing in these proceedings at least to explain his side to the complainant who, to all interests and purposes, is convinced that he was given a raw deal by him. For this actuation alone, the respondent should be reprimanded.

"The record shows that this administrative case was postponed no less than eleven times since August 21, 1961 just to give an opportunity to the respondent himself to appear for his defense. In one of his motions, dated March 10, 1963, he requested that the hearing be set in June, 1963, that is more than three months, on the ground that he had a full calendar of cases to attend to for March, April and May. To allow him this opportunity, this office granted this request and set the hearing on June 27, and 28, 1963. Notwithstanding due notice, respondent failed to appear.

RECOMMENDATION

"PREMISES CONSIDERED, it is recommended that the respondent be reprimanded."

The evidence shows that Pedro B. Velasquez, brother of the complainant herein, and Jose Pañgan were sued for ejectment in the Municipal Court of Baguio by Ernesto Escaler and others (Civil Case No. 2174). While respondent's claim that, in the Municipal Court, he represented the defendants, is not supported by irrefutable evidence, the record shows conclusively that, after judgment had been rendered therein requiring said defendants to vacate the premises in question and to pay back rentals, the respondent actually helped them in the preparation and filing of the corresponding notice of appeal (signed by the defendants) and of the appeal bond and supersedeas bond.

Upon the other hand, there is no clear evidence to show that the complainant was the one who personally engaged respondent's services in the matters above referred to, on behalf of his brother. It must have been the latter and his co-defendant, Pafigan - both residents of Baguio City at the time - who asked him for legal help.

As the appeal was duly perfected - as shown by the fact that the case was docketed in the Court of First Instance of the City of Baguio as Civil Case No. 837 – it can not be denied that the required appeal bond (P25.00 in cash) was filed.

Moreover, to stay the execution of the decision of the Municipal Court of the City of Baguio during the pendency of the appeal, the required supersedeas bond was also filed by the Far Eastern Surety and Insurance Co., Inc. on February 10, 1959 (record p. 39). As usual in cases of such nature, said surety company protected itself against liability by requiring the defendants in the case to put up a counter bond. Alberto and Nicolas Ymson, two acquaintances of the defendant Pedro B. Velasquez, agreed to act as counter-bondsman and entered into the corresponding Indemnity Agreement with the Far Eastern Surety and Insurance Company, Inc. (Record p. 38). Having done so merely as accommodation parties, they, in turn, protected themselves against possible liability under the Indemnity Agreement by demanding security from the defendants. Thus it appears that defendant Velasquez who, apparently was not in a position to give such security (nor was his co-defendant) had to request his brother, the herein complainant, for authority to make use of certain personal properties owned by the latter with the total value of P4,432.00 "to answer for the guaranty bonds filed by Messrs. Alberto Ymson and Nicolas Ymson in favor of my brother Mr. Pedro B. Velasquez should the latter fail to pay the said obligation" (record p. 81). The written authority further bound herein complainant to "guarantee the fulfillment of said obligation of Mr. Pedro B. Velasquez to his guarantors in said bonds". (idem). For this reason, perhaps, the chattel mortgage in favor of the Ymsons was executed by complainant him-self (Record p. 9) on February 19, 1959.

The respondent, while admitting that he intervened in the preparation and filing of the two bonds and indemnity agreement abovementioned, denies that thereafter he acted as counsel for the defendants in the Court of First Instance. In this connection, the record really does not show that he ever filed his appearance in the case as counsel for said parties, while, on the other hand, the same record affirmatively discloses that the answer filed by the defendants was signed by them personally (record pp. 177-178).

The record further discloses that under date of April 20, 1959, the Court of First Instance of the City of Baguio rendered judgment in Civil Case No. 837 ordering the defendants therein to vacate the premises in question and to pay the plaintiff, jointly, the accrued sum of P2,247.50 as back rentals, with interest at the legal rate from April 15, 1959, the sum of P300.00 as attorney's fees and the further sum of P250.00 a month as rentals from April 15, 1959 until they have vacated the premises, and the costs of suit. The decision expressly stated that the defendant Pedro Velasquez "admitted their indebtedness and only ask for more time within which to pay". (record pp. 43-44).

As the decision abovementioned became final and executory, the judgment-creditors took steps for its execution and, as the judgment-debtors failed to pay, the former moved for the confiscation of the supersedeas bond. In connection with this incident the surety (Far Eastern Surety and Insurance Company, Inc.) filed a cross-claim against the judgment-debtors and a third party complaint against Nicolas and Alberto Ymson - the counter-guarantors. In turn, the Ymsons filed a fourth party complaint against herein complainant Adriano B. Velasquez who had executed in their favor the chattel mortgage mentioned heretofore. After proper proceedings the Court of First Instance of the City of Baguio, under date of June 17, 1966, rendered judgment as follows:

"Judgment is, therefore, rendered ordering Nicolas and Alberto Ymson (Third Party Defendants) to reimburse the bonding company whatever sums said bonding company may have to pay Plaintiff under the supersedeas bond; and in turn, Adriano Velasquez, Fourth Party Defendant is ordered to pay the two Ymsons, whatever sums they may have to reimburse the bonding company and should he fail to do so, the chattels mentioned in Exhibit '111' are ordered sold at public auction to answer for the same. Costs shall be paid by the Ymsons and Adriano Velasquez equally."

As the herein complainant failed to pay the Ymsons the amount that the latter had paid to the Far Eastern Surety and Insurance Company, the Ymsons proceeded to foreclose extrajudicially the chattel mortgage executed in their favor. What happened in this connection is set forth briefly in the decision of the Court of First Instance of Baguio City in *People of the Philippines vs. Adriano B. Velasquez*, Criminal Case No. 2003, for violation of Article 319, paragraph 2, Revised Penal Code, as follows:

"On February 19, 1959, the accused executed a chattel mortgage over certain personal properties in favor of Alberto and Nicolas Ymson - an International Harvester refrigerator was one of those given in chattel mortgage. On February 25, 1959, the accused pledged this same refrigerator at the Pines Pawnshop, Baguio (Exh. 'C'). When the Ymsons sought to foreclose their chattel mortgage they discovered the pledge made of the refrigerator - hence this information. The evidence for the prosecution sought to show that Pedro Velasquez, brother of the accused, was about to be evicted from the premises of the Manhattan Cafe by his landlord. He needed a supersedeas bond and asked the Ymson brothers to sign an Indemnity Agreement with him with the surety company. To protect themselves, the Ymsons demanded the chattel mortgage, Exhibit 'A'. The supersedeas bond was duly filed but the case decided against Pedro Velasquez, who was evicted and the bond answered for unpaid rentals. The surety company had to make good and went against the Indemnity Agreement and when the Ymsons had to pay, they sought to foreclose the chattel mortgage, and only discovered then that the Pines Pawnshop had a prior right to the refrigerator, as the chattel mortgage although dated February 19, 1959, was only recorded on March 13, 1959. So they filed this criminal case."

It appears, however, that the court not only acquitted the herein complainant "on the ground of reasonable doubt" because he had acted in good faith in pledging his refrigerator to the Pines Pawnshop in the belief that the chattel mortgage he had executed in favor of the Ymsons was null and void, but also made this unfavorable finding against the herein respondent:

"x x x x x x x x convinced that there has been a connivance of some kind between the Ymsons and their counsel to place in a position where he would have to pay or face criminal prosecution. This Court is convinced that the accused was deceived into signing the deed of chattel mortgage."

The respondent does not deny that he acted as counsel of the Ymson brothers in the following matters: their fourth party complaint against the herein complainant; in the foreclosure of the chattel mortgage executed by the latter in favor of the Ymsons, and acted as private prosecutor in Criminal Case No. 2003 filed against the complainant in the Court of First Instance of Baguio City.

As already intimated heretofore, the fact that the respondent helped Pedro B. Velasquez and Jose P. Pañgan in perfecting their appeal from the adverse decision of the Municipal Court of the City of Baguio and in the filing of the supersedeas bond and the related Indemnity Agreement, did not necessarily make him their attorney of record in the appealed case (Civil Case No. 837 of the Court of First Instance of the City of Baguio). As a matter of fact, he filed no formal appearance as such in said case; neither did he appear on their behalf in any of the incidents that arose in the Court of First Instance of the City of Baguio, nor did he file and sign any pleading filed in said court.

Upon the other hand, having intervened in the execution of the Indemnity Agreement mentioned heretofore, We find nothing objectionable in his having represented the Ymson brothers later on (a) to defend them against the claim of the Far Eastern Surety and Insurance Company Inc. and (b) to enforce their rights against the herein complainant in accordance with the terms and conditions of the chattel mortgage executed by the latter in their favor. As already intimated likewise in previous paragraphs, there was no relation of attorney and client between the herein respondent, on the one hand, and the herein complainant, on the other. That they came into contact with each other in connection with the filing of the cash appeal bond and the execution of the chattel mortgage already referred to, did not create between them that particular confidential relationship. Such being the case, We find no

reason, legal or moral, to condemn his actuations as counsel for the Ymson brothers as related heretofore.

The sum of P100.00 that the complainant sent to his brother Pedro and which the latter turned over to the respondent appears to have been accounted for. It was spent to pay the docket fees of the appellate court in connection with the ejectment case (P10.00); to file the cash appeal bond (P25.00); to pay the registration fee for the chattel mortgage (P6.50); to pay the notarial fees due for the preparation and acknowledgement of the chattel mortgage (P20.00); to pay the notarial fees due for the preparation and acknowledgement of the supersedeas bond (P10.00); to pay the documentary stamps affixed on the documents already mentioned (P3.80), and to pay the notarial fees for the preparation and acknowledgement of the Indemnity Agreement (P10.00). As these expenses amount to a total of P85.30, there was left but the sum of P14.70 in the hands of the respondent. This was retained by him as partial payment of his professional fees in the preparation and filing of the notice of appeal; the filing of the appeal and supersedeas bond, and in the execution of the Indemnity Agreement.

Complainant's claim that aside from the P100.00 he also delivered another sum of P120.00 to the respondent is not supported by convincing evidence. At any rate, even assuming that the respondent received said amount and kept it for himself, the same, added to the balance of P14.70 mentioned heretofore, could be considered as reasonable compensation for the services he had rendered to complainant's brother.

Notwithstanding what has been said heretofore, it would have been better if the herein respondent had acted more carefully in the premises. If, as he claims, he represented Jose P. Pañgan and Pedro B. Velasquez in the ejectment case before the Municipal Court of the City of Baguio, he should have filed his formal appearance therein. And if, as he now claims, he ceased to be their counsel when the case was appealed to the Court of First Instance, he should have seen to it that such fact was made of record. Had this been done, herein complainant would have had no reason to say or suspect that he had represented conflicting interests.

As regards the opinion expressed in the decision of the Court of First Instance of Baguio City in Criminal Case No. 2003 to the effect that the respondent had conspired with the Ymsons to place the herein complainant "in a position where he would either have to pay or face criminal prosecution. This Court is convinced that the accused was deceived into signing the Deed of Chattel Mortgage", We believe that respondent's alleged misconduct must be considered in the light of the fact that complainant's brother was desperately in need of filing a supersedeas bond to stay the execution of the decision rendered in the ejectment case by the Municipal Court of the City of Baguio. Far Eastern Surety and Insurance Company Inc., agreed to file said bond provided there was a counter-guaranty. For their part, the Ymsons agreed to help complainant's brother by acting as counter-guarantors but demanded the execution of some sort of security from which they could seek reimbursement of whatever amount they might be sentenced to pay the surety. The record is clear in this connection that the complainant gave written authority to his brother to make use of some of his personal properties for this purpose. As a matter of fact, however, he was the one who executed the chattel mortgage in favor of the Ymsons. Even assuming that it was the respondent who suggested that a chattel mortgage be executed by the complainant in favor of the Ymsons to answer for any possible loss by the latter, that act was in no way unlawful, immoral or against respondent's oath as an officer of the court. Upon the foregoing facts, there was no legal impediment for respondent representing the Ymsons in the foreclosure of the chattel mortgage and in the criminal case mentioned heretofore.

Moreover, even though upon the evidence before Us, the respondent did not represent complainant's brother and the latter's co-defendant in the Court of First Instance of the City of Baguio in relation to Civil Case No. 837 of said court, it would have been more in accordance with the demands of the ethics of the legal profession that he should have refrained from representing the Ymsons in the latter's fourth party complaint; in the foreclosure of the chattel mortgage mentioned heretofore, and in the prosecution of Criminal Case No. 2003 against herein

complainant. His intervention in the ejectment case in the municipal court on behalf of Pedro B. Velasquez apparently left the complainant with the impression that he had continued to represent said party in the court of first instance, thus concluding that his actuations in said case on appeal and in the criminal case already mentioned, were in violation of his oath of office.

PREMISES CONSIDERED, We hereby approve the recommendation of the Office of the Solicitor General to the effect that the respondent be, as he is hereby, admonished to be more careful in the future in the matter of his relations with litigants; with the warning that similar conduct on his part in the future will be dealt with more drastically.

Concepcion, C.J., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Reyes, J.B.L., J., on leave.

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